

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

SHERRY VILLA,)
)
)
 Plaintiff,)
)
)
vs.) Case No.: 2:07-cv-151-WKW
)
)
AUTAUGA COUNTY, ALABAMA;)
AUTAUGA COUNTY SHERIFFS)
DEPARTMENT; and)
JAMES‘HERBIE’ JOHNSON,)
individually,)
)
 Defendants.)

MOTION TO DISMISS BY AUTAUGA COUNTY SHERIFFS DEPARTMENT

COMES NOW Defendant, designated as the Autauga County Sheriff Department, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and moves the Court to dismiss all claims against it, and as grounds therefor, states as follows:

1. On or about February 22, 2007, Plaintiff Sherry Villa commenced the above-referenced action against the Autauga County Sheriff’s Department.
2. In White v. Birchfield, 582 So. 2d 1085 (Ala. 1991), the Supreme Court of Alabama held that a county sheriff’s department is not a legal entity, and an action may not, therefore, be maintained against it. King v. Colbert County, 620 so. 2d 623 (Ala. 1993). The Eleventh Circuit has recognized the holding in White v. Birchfield, supra, and held that, under Alabama law, a county sheriff’s department lacks the capacity to be sued. Dean v. Barber, 951 F.2d 1210, 1215 (11th Cir. 1992); Williams v. Goldsmith, 905 F.Supp. 996, 1000 (M.D. Ala. 1995). Plaintiff cannot, therefore, establish a claim against the Autauga County Sheriff’s Department as a matter of law.

WHEREFORE, THE PREMISES CONSIDERED, the Defendant designated as the Autauga County Sheriff Department, respectfully requests, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, that the Complaint filed against it be dismissed for failure of the Plaintiff to state a claim upon which relief can be granted.

/s/ C. Winston Sheehan, Jr.
C. WINSTON SHEEHAN, JR.
Attorney for Defendant,
Sheriff Herbie Johnson

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2007, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system which will send notification of such filing to the following registered persons and that those persons not registered with the CM/ECF system were served by U.S. mail:

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/s/ C. Winston Sheehan, Jr.
OF COUNSEL